

Introduced by Senator Denham

February 9, 2005

An act to amend Sections 13380 and 23612 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 176, as introduced, Denham. Traffic collision: fatality: testing.

Under existing law, a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any driving under the influence offense allegedly committed in violation of the statutes.

This bill would extend the implied consent testing requirement to a person who, while driving, is at fault in causing a traffic collision that is the proximate cause of a fatality. The bill would also require a peace officer, if a person is so involved in a collision and refuses to take the test, to serve a notice of an order suspending or revoking the person's privilege to operate a motor vehicle.

Because this bill would increase the level of services imposed on local law enforcement, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13380 of the Vehicle Code is amended
2 to read:

3 13380. (a) If a peace officer serves a notice of an order of
4 suspension pursuant to Section 13388 *or paragraph (2) of*
5 *subdivision (e) of Section 23612*, or arrests ~~any~~ a person for a
6 violation of Section 23140, 23152, or 23153, the peace officer
7 shall immediately forward to the department a sworn report of all
8 information relevant to the enforcement action, including
9 information that adequately identifies the person, a statement of
10 the officer's grounds for belief that the person violated Section
11 23136, 23140, 23152, or 23153, a report of the results of ~~any~~ all
12 chemical tests that were conducted on the person or the
13 circumstances constituting a refusal to submit to or complete the
14 chemical testing pursuant to Section 13388 or 23612, a copy of
15 any notice to appear under which the person was released from
16 custody, and, if immediately available, a copy of the complaint
17 filed with the court. For the purposes of this section and
18 subdivision (g) of Section 23612, "immediately" means on or
19 before the end of the fifth ordinary business day following the
20 arrest, except that with respect to Section 13388 only,
21 "immediately" has the same meaning as that term is defined in
22 paragraph (3) of subdivision (b) of Section 13388.

23 (b) The peace officer's sworn report shall be made on forms
24 furnished or approved by the department.

25 (c) For the purposes of this section, a report prepared pursuant
26 to subdivision (a) and received pursuant to subdivision (a) of
27 Section 1801, is a sworn report when it bears an entry identifying
28 the maker of the document or a signature that has been affixed by
29 means of an electronic device approved by the department.

30 SEC. 2. Section 23612 of the Vehicle Code is amended to
31 read:

32 23612. (a) (1) (A) A person who drives a motor vehicle is
33 deemed to have given his or her consent to chemical testing of
34 his or her blood or breath for the purpose of determining the
35 alcoholic content of his or her blood, if lawfully arrested for an

1 offense allegedly committed in violation of Section 23140,
2 23152, or 23153, *or if, while driving, is at fault in causing a*
3 *traffic collision that is the proximate cause of a fatality.* If a
4 blood or breath test, or both, are unavailable, then paragraph (2)
5 of subdivision (d) applies.

6 (B) A person who drives a motor vehicle is deemed to have
7 given his or her consent to chemical testing of his or her blood or
8 urine for the purpose of determining the drug content of his or
9 her blood, if lawfully arrested for an offense allegedly committed
10 in violation of Section 23140, 23152, or 23153, *or if, while*
11 *driving, is at fault in causing a traffic collision that is the*
12 *proximate cause of a fatality.*

13 (C) ~~The~~ (i) *Except as provided in clause (ii), the testing shall*
14 *be incidental to a lawful arrest and administered at the direction*
15 *of a peace officer having reasonable cause to believe the person*
16 *was driving a motor vehicle in violation of Section 23140,*
17 *23152, or 23153.*

18 (ii) *Each driver who is at fault in causing a traffic collision*
19 *that is the proximate cause of a fatality shall submit to testing*
20 *under this section upon the direction of a peace officer.*

21 (D) The person shall be told that his or her failure to submit to,
22 or the failure to complete, the required chemical testing will
23 result in a fine, mandatory imprisonment if the person is
24 convicted of a violation of Section 23152 or 23153, and (i) the
25 suspension of the person's privilege to operate a motor vehicle
26 for a period of one year, (ii) the revocation of the person's
27 privilege to operate a motor vehicle for a period of two years if
28 the refusal occurs within seven years of a separate violation of
29 Section 23103 as specified in Section 23103.5, or of Section
30 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of
31 subdivision (c) of Section 192 of the Penal Code that resulted in
32 a conviction, or if the person's privilege to operate a motor
33 vehicle has been suspended or revoked pursuant to Section
34 13353, 13353.1, or 13353.2 for an offense that occurred on a
35 separate occasion, or (iii) the revocation of the person's privilege
36 to operate a motor vehicle for a period of three years if the
37 refusal occurs within seven years of two or more separate
38 violations of Section 23103 as specified in Section 23103.5, or of
39 Section 23140, 23152, or 23153, or of Section 191.5 or
40 paragraph (3) of subdivision (c) of Section 192 of the Penal

1 Code, or any combination thereof, that resulted in convictions, or
2 if the person's privilege to operate a motor vehicle has been
3 suspended or revoked two or more times pursuant to Section
4 13353, 13353.1, or 13353.2 for offenses that occurred on
5 separate occasions, or if there is any combination of those
6 convictions or administrative suspensions or revocations.

7 (2) (A) If the person is lawfully arrested for driving under the
8 influence of an alcoholic beverage, *or if, while driving, is at fault*
9 *in causing a traffic collision that is the proximate cause of a*
10 *fatality*, the person has the choice of whether the test shall be of
11 his or her blood or breath and the officer shall advise the person
12 that he or she has that choice. If the person arrested either is
13 incapable, or states that he or she is incapable, of completing the
14 chosen test, the person shall submit to the remaining test. If a
15 blood or breath test, or both, are unavailable, then paragraph (2)
16 of subdivision (d) applies.

17 (B) If the person is lawfully arrested for driving under the
18 influence of any drug or the combined influence of an alcoholic
19 beverage and any drug, the person has the choice of whether the
20 test shall be of his or her blood, breath, or urine, and the officer
21 shall advise the person that he or she has that choice.

22 (C) A person who chooses to submit to a breath test may also
23 be requested to submit to a blood or urine test if the officer has
24 reasonable cause to believe that the person was driving under the
25 influence of a drug or the combined influence of an alcoholic
26 beverage and a drug and if the officer has a clear indication that a
27 blood or urine test will reveal evidence of the person being under
28 the influence. The officer shall state in his or her report the facts
29 upon which that belief and that clear indication are based. The
30 person has the choice of submitting to and completing a blood or
31 urine test, and the officer shall advise the person that he or she is
32 required to submit to an additional test and that he or she may
33 choose a test of either blood or urine. If the person arrested either
34 is incapable, or states that he or she is incapable, of completing
35 either chosen test, the person shall submit to and complete the
36 other remaining test.

37 (3) If the person is lawfully arrested for an offense allegedly
38 committed in violation of Section 23140, 23152, or 23153, *or if,*
39 *while driving, is at fault in causing a traffic collision that is the*
40 *proximate cause of a fatality*, and, because of the need for

1 medical treatment, the person is first transported to a medical
2 facility where it is not feasible to administer a particular test of,
3 or to obtain a particular sample of, the person's blood, breath, or
4 urine, the person has the choice of those tests that are available at
5 the facility to which that person has been transported. In that
6 case, the officer shall advise the person of those tests that are
7 available at the medical facility and that the person's choice is
8 limited to those tests that are available.

9 (4) The officer shall also advise the person that he or she does
10 not have the right to have an attorney present before stating
11 whether he or she will submit to a test or tests, before deciding
12 which test or tests to take, or during administration of the test or
13 tests chosen, and that, in the event of refusal to submit to a test or
14 tests, the refusal may be used against him or her in a court of law.

15 (5) A person who is unconscious or otherwise in a condition
16 rendering him or her incapable of refusal is deemed not to have
17 withdrawn his or her consent and a test or tests may be
18 administered whether or not the person is told that his or her
19 failure to submit to, or the noncompletion of, the test or tests will
20 result in the suspension or revocation of his or her privilege to
21 operate a motor vehicle. A person who is dead is deemed not to
22 have withdrawn his or her consent and a test or tests may be
23 administered at the direction of a peace officer.

24 (b) A person who is afflicted with hemophilia is exempt from
25 the blood test required by this section.

26 (c) A person who is afflicted with a heart condition and is
27 using an anticoagulant under the direction of a licensed physician
28 and surgeon is exempt from the blood test required by this
29 section.

30 (d) (1) A person lawfully arrested for an offense allegedly
31 committed while the person was driving a motor vehicle in
32 violation of Section 23140, 23152, or 23153 may request the
33 arresting officer to have a chemical test made of the arrested
34 person's blood or breath for the purpose of determining the
35 alcoholic content of that person's blood, and, if so requested, the
36 arresting officer shall have the test performed.

37 (2) If a blood or breath test is not available under
38 subparagraph (A) of paragraph (1) of subdivision (a), or under
39 subparagraph (A) of paragraph (2) of subdivision (a), or under
40 paragraph (1) of this subdivision, the person shall submit to the

1 remaining test in order to determine the percent, by weight, of
2 alcohol in the person's blood. If both the blood and breath tests
3 are unavailable, the person shall be deemed to have given his or
4 her consent to chemical testing of his or her urine and shall
5 submit to a urine test.

6 (e) (1) If the person, who has been arrested for a violation of
7 Section 23140, 23152, or 23153, refuses or fails to complete a
8 chemical test or tests, or requests that a blood or urine test be
9 taken, the peace officer, acting on behalf of the department, shall
10 serve the notice of the order of suspension or revocation of the
11 person's privilege to operate a motor vehicle personally on the
12 arrested person. The notice shall be on a form provided by the
13 department.

14 (2) *If a driver who is at fault in causing a traffic collision that*
15 *is the proximate cause of a fatality refuses or fails to complete a*
16 *chemical test or tests, the peace officer, acting on behalf of the*
17 *department, shall serve the notice of the order of suspension or*
18 *revocation of the person's privilege to operate a motor vehicle*
19 *personally on the person. The notice shall be on a form provided*
20 *by the department.*

21 (f) If the peace officer serves the notice of the order of
22 suspension or revocation of the person's privilege to operate a
23 motor vehicle, the peace officer shall take possession of all
24 driver's licenses issued by this state ~~which are~~ *that is* held by the
25 person. The temporary driver's license shall be an endorsement
26 on the notice of the order of suspension and shall be valid for 30
27 days from the date of arrest *or accident*.

28 (g) (1) The peace officer shall immediately forward a copy of
29 the completed notice of suspension or revocation form and any
30 driver's license taken into possession under subdivision (f), with
31 the report required by Section 13380, to the department. If the
32 person submitted to a blood or urine test, the peace officer shall
33 forward the results immediately to the appropriate forensic
34 laboratory. The forensic laboratory shall forward the results of
35 the chemical tests to the department within 15 calendar days of
36 the date of the arrest.

37 (2) (A) Notwithstanding any other provision of law, a
38 document containing data prepared and maintained in the
39 governmental forensic laboratory computerized database system
40 that is electronically transmitted or retrieved through public or

1 private computer networks to or by the department is the best
2 available evidence of the chemical test results in all
3 administrative proceedings conducted by the department. In
4 addition, any other official record that is maintained in the
5 governmental forensic laboratory, relates to a chemical test
6 analysis prepared and maintained in the governmental forensic
7 laboratory computerized database system, and is electronically
8 transmitted and retrieved through a public or private computer
9 network to or by the department is admissible as evidence in the
10 department's administrative proceedings. In order to be
11 admissible as evidence in administrative proceedings, a
12 document described in this subparagraph shall bear a certification
13 by the employee of the department who retrieved the document
14 certifying that the information was received or retrieved directly
15 from the computerized database system of a governmental
16 forensic laboratory and that the document accurately reflects the
17 data received or retrieved.

18 (B) Notwithstanding any other provision of law, the failure of
19 an employee of the department to certify under subparagraph (A)
20 is not a public offense.

21 (h) A preliminary alcohol screening test that indicates the
22 presence or concentration of alcohol based on a breath sample in
23 order to establish reasonable cause to believe the person was
24 driving a vehicle in violation of Section 23140, 23152, or 23153
25 is a field sobriety test and may be used by an officer as a further
26 investigative tool.

27 (i) If the officer decides to use a preliminary alcohol screening
28 test, the officer shall advise the person that he or she is requesting
29 that person to take a preliminary alcohol screening test to assist
30 the officer in determining if that person is under the influence of
31 alcohol or drugs, or a combination of alcohol and drugs. The
32 person's obligation to submit to a blood, breath, or urine test, as
33 required by this section, for the purpose of determining the
34 alcohol or drug content of that person's blood, is not satisfied by
35 the person submitting to a preliminary alcohol screening test. The
36 officer shall advise the person of that fact and of the person's
37 right to refuse to take the preliminary alcohol screening test.

38 SEC. 3. If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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